

# SENATE BILL REPORT

## SB 6173

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As Amended by House, April 23, 2009

**Title:** An act relating to improving sales tax compliance.

**Brief Description:** Improving sales tax compliance.

**Sponsors:** Senator Prentice.

**Brief History:**

**Committee Activity:** Ways & Means: 4/16/09, 4/18/09 [DP, DNP].

Passed Senate: 4/19/09, 26-21.

Passed House: 4/23/09, 86-9.

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Fairley, Keiser, Kline, Kohl-Welles, McDermott, Murray, Oemig, Pridemore, Regala and Rockefeller.

**Minority Report:** Do not pass.

Signed by Senators Carrell, Hewitt, Honeyford, Parlette and Schoesler.

**Staff:** Dean Carlson (786-7305)

**Background:** Under current law, persons purchasing goods or services for resale are exempt from the retail sales tax if they provide the seller with a resale certificate. The resale certificate is a document or combination of documents that substantiates the wholesale nature of a sale. Resale certificates are not issued by the Department of Revenue (Department), but can be obtained from the Department's website. When a buyer fills out a resale certificate, among the information they need to supply is their name and unified business identifier or business registration number. The seller retains the resale certificate as evidence of the tax exempt sale.

Purchases of materials by contractors performing construction for consumers (custom construction) where the materials will become part of the completed project, are purchases for resale (wholesale purchases). Such purchases are not subject to retail sales tax. Such contractors may also purchase subcontractor services for resale. To verify that material

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purchases and subcontractor services are for resale, a contractor must give a valid resale certificate to the materials supplier or subcontractor. This tax treatment also applies to subcontractors working on custom construction projects.

Speculative contractors (spec construction) may not purchase materials that will become part of the project for resale and must pay sales tax. This is the same for the subcontractors that work for them. They are the end consumer of the materials or services and thus have to pay sales tax on these purchases.

**Summary of Bill:** Beginning January 1, 2010, the requirement for a resale certificate to make purchases for resale exempt of the sales tax is eliminated and replaced with a seller's permit. The seller's permit will be issued by the Department to businesses registered with the Department if the business makes wholesale purchases. This will be determined based generally on industry type and reporting history. Businesses that do not make wholesale purchases as part of their business will not be issued a sellers permit.

The provision for wholesale purchases for custom contractors is eliminated. Custom contractors (prime and subcontractors) will be required to pay sales tax on their purchases of materials and services. To avoid the pyramiding of sales tax, such contractors would claim a credit against sales and use taxes reported in the amount of sales and use taxes paid on materials and subcontractor services. Exemptions for materials and subcontractor services are provided for custom construction projects in which the end consumer is exempt from sales tax.

Sales and use tax exemptions are provided or modified so as not to affect the sales and use taxation of construction projects within the scope of a sales and use tax deferral certificate issued by the Department or a specific sales and use tax exemption. To receive the sales tax exemption, the contractor must provide the seller with a copy of the sales and use tax deferral certificate issued by the Department for the project in which the exempt purchase relates.

Additionally contractors are exempt from sales tax on purchases of construction materials and services for the following types of projects in which the consumer is exempt from tax:

- construction for American Indians in Indian Country;
- hay sheds for farmers;
- livestock nutrient facilities;
- anaerobic digesters; and
- aerospace manufacturing facilities located on port property.

Businesses seeking a new seller's permit or to renew or reinstate a seller's permit must apply to the Department. The Department must rule on applications within 60 days.

Permits issued to taxpayers who register with the Department after January 1, 2009, are valid for two years and may be renewed for four years.

Permits issued to taxpayers who registered with the Department on or before January 1, 2009, are valid for four years.

The misuse of a seller's permit penalty (currently applicable to resale certificates) is changed from 50 percent to 100 percent.

**Appropriation:** None.

**Fiscal Note:** Requested on April 15, 2009.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** January 1, 2010

**Staff Summary of Public Testimony:** PRO: We recognize the budget issues and want to prevent fraud and tax evasion. This would help us collect taxes that are already due and owed. We have only over one million UBI numbers out there that could be put on a resale certificate, of that 450,000 are registered businesses with only 150,000 of those businesses that make sells for resale. A permit system narrows the universe of individuals that could fraudulently use the resale certificate by 80 percent. Many other states use this type of system including Florida. Many contractors use the resale certificate even though they are required to pay at source. This is a severe problem in the construction industry as identified by the Underground Economy Task Force.

CON: It is recognized that the resale certificate needs to be revised or enhanced, but we feel this should be vetted in a process with the stakeholder community. We have just begun to analyze this bill. The organizations playing by the rules will face burdens and will have to comply. This is a fundamental change and we have to see the effects of the bill. We could support changes and we believe this is necessary; however, this is throw the baby out with the bathwater. We acknowledge that this is a problem, but lets look at enforcement and the issue needs a longer look.

**Persons Testifying:** PRO: Julie Murray, Office of Financial Management.

CON: Amber Carter, Association of Washington Business; Rick Slunaker, Associated General Contractors.

**House Amendment(s):** Eliminates provisions of the bill requiring construction contractors to pay sales tax at the time of purchase. Requires a seller's permit in order for construction contractors to make tax exempt wholesale purchases. Restores 50 percent penalty for misuse of seller's permits (and uniform exemption certificates). Requires the Finance Committee and the Joint Legislative Task Force on the Underground Economy to review the issues and concerns created by the bill and provide reports to the Legislature by December 1, 2009.